**COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING**

[Chapter VIII, Rule 32 (2) (b)]

**Description of Case.**

**Writ Petition No. 2757 of 2001**

**(Old No. 15643 /1987)**

State of U.P.

Vs.

Additional Commissioner, Kumaon Division,

Nainital and others.

**A.F.R. (Approved for Reporting)**
Not Approved for Reporting

**(B.S. Verma, J.)**

***Initials of Judge***

**Date:** 29-9-2006

**Reserved Judgment**

**THE HIGH COURT O UTTARANCHAL AT NAINITAL.**

Writ Petition (M/S) No. 2757 of 2001
(Old Civil Misc. Writ Petition No. 15643 of 1987

The State of U.P.

... **Petitioner.**

*Versus*

1. Additional Commissioner, Kumaon Division, Nainital.
2. Prithvi Raj Kapoor S/o Kashi Ram R/o Village Bagulia Tehsil Khatima, District- Nainital.
3. Lal Singh S/o Sri Pal Singh.
4. Sadhu Singh S/o Sri Lal Singh.
5. Sarup Singh S/o Sri Lal Singh.
6. Balkar Singh S/o Sri Lal Singh.
7. Mahendra Singh S/o Sri Guru Dutt Singh.
   Respondents No.3 to 7 residents of Village Jarasu Pratapur, Tehsil Khatima, District- Nainital.

...**Respondents.**

**Sri Nand Prasad, Learned Standing Counsel for the petitioner-State.**
**Sri B.S.Adhikari, learned counsel for the respondents 4-7.**

**Date: September 29, 2006.**

**(Hon'ble B.S. Verma, J.)**

By means of this writ petition, the petitioner-State has prayed for quashing the impugned order dated 4-5-1987 (Annexure 5) to the writ petition and 30-9-1978 (**Annexure No.1**), passed by the respondent no.1 Additional Commissioner (Judicial). By the impugned order, the review petition of appellant Lal Singh was allowed and he was held to have become Bhumidhar and accordingly the land belong belonging to Lal Singh and others (contesting respondents before this Court) was exempted from ceiling.

For a just decision of the case, a reference to the brief facts is necessary. Initially proceedings under the provisions of U.P. Imposition on Land Holdings Act 1960 (***for short the Act)*** were initiated and the Ceiling Case No. 51/211 of 1975-76 was registered State of U.P. Vs. Prithvi Raj Kapoor. Consequently, under Section 10(2) of the Act notice was issued to Prithvi Raj Kapoor, who filed objection. The appellants-petitioners also filed objection under Section 11(2) of the Act alleging that they had purchased and from the

original tenure holder and they be arrayed as party to the proceedings. Accordingly, they were impleaded as party to the proceedings. The Prescribed Authority after hearing that parties declared 197 Bigha, 6 Biswa land of the original tenure holder as surplus and rejected the objections of the petitioners holding that holding they were not tenure holders of the land claimed by them. Aggrieved, the contesting respondents/appellants went up in appeal, which was dismissed by the appellate court vide judgment and order dated 22.8.1979. The petitioner then preferred writ petition before the Allahabad High Court, which was registered as C.M.Writ Petition No. 4466 of 1980 and the same was decided on 10-5-1984. The order was passed to the following effect:-

***"The writ petition is allowed in part, the orders of the appellate authority in appeal as also in the review are set aside and the appellate authority is directed to admit the additional evidence field in review and to decide the appeal afresh in accordance with law. While deciding the appeal, the only question which the appellate authority will consider is whether the petitioners had acquired right by virtue of Section 230-A(a) of the U.P. Zamindari Abolition and Land Reforms Act. The case should be disposed of within three months from the date of presentation of a copy of this order by the parties before the appellate authority. The parties will bear their own costs."***

The appellate court, in turn, after hearing both the parties and perusing the evidence came to the conclusion that the appellants failed to establish that they became tenure holder regarding plot nos. 472, 473, 474, 479 and 468, while the Patta and power of attorney on record revealed that these plots have not been transferred to them by the original tenure holder, as claimed by the appellant-contesting respondents. The appellate court on the basis of copy of Khatauni for the years 1374 Fasli, 1375 Fasli, 1377 Fasli and 1384 Fasli, found that in 1374 Fasli, original tenure holder was recorded as tenure holders over the said plots and names of appellants-petitioners found place in remarks column. It was observed that in view of Section 230(a) of Z.A. and L.R.Act, a person recorded in Khatauni or Khasra for 1374 Fasli shall be regarded as Adhivasi and in view of Land Laws Amendment Act 1977, Adhivasi shall automatically became Sirdar and Sirdar would become Bhumidhar, but the person who are not recorded in Khasra and Khatauni in 1374 Fasli shall not acquire Adhivasi rights and

thereafter Sirdar and Bhumidhar respectively and they cannot claim tenancy and occupancy right in the land recorded in their name after 1374 Fasli. It was contended that the appellants-contesting respondents never acquired as Adhivasi over the said plots, i.e. Plot Nos. 468, 472, 474, 479 or 639, 643, 645 and 649. Ultimately, the appeal preferred by the petitioner-respondents was dismissed vide judgment and order dated 20.12.1984. Aggrieved, the petitioner-respondents preferred Review Petition before the respondent no.1, who after perusal of the evidence on record, allowed the review petition and passed the impugned order ( Annexure No. 5) which gave rise to the present writ petition.

The impugned order passed by the respondent no.1 has been assailed by the petitioner-State mainly on the ground that the findings recorded by the Additional Commissioner suffers from manifest error of law inasmuch as the observations made by the Allahabad High Court in order dated 10-5-1984 were ignored and the finding was recorded without application of mind.

I have heard learned Standing Counsel Sri Nand Prasad assisted by Sri Atul Bansal, for the petitioner as well as Sri B.S.Adhikari, learned counsel for the contesting respondents and perused the entire material on record.

By the Government Notification No. 226/1A-2-1(2)-69, dated June 30, 1969 the U.P.Zamindari Abolition & Land Reforms Act, 1950 with certain modification and deletion of certain provision has been made applicable to the areas mentioned in the notification. In place of Section 131 of the said Act, the following were substituted:-

***"131. Every persons belonging to any of the following classes shall be called as Sirdar and shall have all the rights and be subject to all the liabilities conferred or imposed upon Sirdars or under this Act; namely:-***

***(a) Every person who, on the date immediately preceding the appointed day held land as-***

***(i) An occupancy tenant:***

***(ii) A hereditary tenant,***
***Not being a tenant referred to in clause (a) of Section 130.***

***(iii) a grantee at favourable rate or rent.***

***(iv) A lessee holding a lease under the provisions of the Government Grants Act, 1895 and having rights of a hereditary tenant under the terms of the lease, but not possessing the right to transfer the holding by sale,***

***(b) Every person who is admitted as sirdar of vacant land under the provisions of this Act,***

***(c) A tenant in any of the 42 Buxari villages specified in the annexure, appended hereto, who was recorded in Class X(1) in the Khatauni of the previous agricultural year and***

***(d) Every person who in any other manner, acquired the rights of a sirdar under or in accordance with the provisions of this Act."***

Now, it has to be seen as to what was the limitation to evict the trespasser in possession before the date of vesting under the Tenancy Act as well as under the U.P.Z.A. and L.R. Act after date of vesting. If no suit was filed against, the trespasser in possession before and after the date of vesting, what would be the effect of non-filing the suit within the prescribed limitation under these Acts.

Under the Z.A. & L.R. Act, limitation for filing the suit under Section 209, U.P.Z.A. & L.R. Rules, Appendix III, Serial No.30, clauses (i) and (iii) provide the limitation in case the suit to be field after the date of vesting for ejectment of a person taking or retaining possession of land unlawfully. Clause (i) of the Rules prescribes a period of three years commencing from the date of vesting where the person was in possession of land on the date of vesting and the period of limitation for ejectment specified in U.P.Tenancy Act had not expired. Clause (iii) thereof prescribes a period of six years commencing from July 1 following the date of occupation and governs case where the land taken possession of the holding of Bhumidhar, Sirdar or Asami.

It is pertinent to mention here that at the time of vesting in entry 30 of Appendix III the limitation was two years for filing the suit for ejectment against the trespasser in possession of the land. The period of limitation of two years for suits mentioned in clause (i) of entry of Appexdix III changed to three years by a Notification of the State Government on April 9, 1955. By this amendment, Governor made amendments in existing Rules framed under the U.P.Z.A. & L.R.Act. Paragraph 32 of the Notification deals with the amendments in Appexdix III clause (6) as follow:-

"6. For the existing entries in column 4 against serial no.30 of following shall be substituted against items (i), (ii) and (iii) of column 3, three years."

Thus, the period of limitation which was two years for all the three clauses changed to three years on 9th April, 1955.

The controversy whether the amended Rules can be applied retrospectively came before the Hon'ble Allahabad High Court in the case of ***Hanumant Rai Vs. Deputy Director of Consolidation and others [ 1973,All.L.J., Page 612]*** referred to above, wherein it was held by the Division Bench that the change in period of limitation would apply prospectively and not retrospectively.

Now, the second aspect of the case whether the period of limitation prescribed in U.P. Tenancy Act has expired before the date of vesting. This controversy has been decided by the Division Bench of the Allahabad High Court in the case of ***'Mohd. Yaseen V. Amarnath adn others" [1974,R.D. Page 239].*** Paragraph no. 5 of the judgment reads as under:-

***"5. Where the period of limitation prescribed in the U.P. Tenancy Act has expired before the date of vesting, the trespasser acquires a right and the tenant loses his tenancy rights.***

***For such a case it is not necessary to lay down a fresh period of limitation as one party acquires the right and the other is deprived of his right. There is no question of re-determination of the rights of the parties. It is only where the possession is not for a period to mature the rights that a fresh limitation has to be provided. Where the period of limitation has not expired, the tenant retains his rights and the trespasser continues to be as trespasser. The tenant under the U.P.Z.A. and L.R.Act became a Bhumidhar, Sirdar or Asami. Consequently, if in such cases clause (iii) is applicable, clause (i) shall become redundant. The redundancy is not to be assumed. In fact, an attempt has to be made to harmonize the provisions so that all the parts of the provisions may be fully applicable. On the application of this Rule, it must be held, as has been observed by the learned Single Judge also, that clause (i) applies to a trespasser in possession from before the date of vesting, where the trespasser has not acquired any right in the land, while the clause (iii) applies to cases where the trespass is after the date of vesting. The prescribed period of limitation for a suit under Section 209 for the ejectment of Amar Nath was thus three years commencing from the date of vesting (July 1, 1961). The suit was instituted long after the expiry of three years period. The suit being barred by limitation was liable to dismissal."***

In that case, the date of vesting was July 1, 1961 and suit was dismissed being barred by limitation.

Learned Standing Counsel for the State has vehemently argued that the review application was allowed by the respondent no.1 illegally and in wrongful exercise of the jurisdiction on the ground that the contesting respondents acquired rights by adverse possession. They never perfected their rights and the judgment and order is against the provisions of Section 230A of the U.P.Z.A. and L.R. Act. The impugned order has been passed without setting aside other finding recorded earlier that the respondents have acquired rights by adverse possession and they were not recorded in 1375 Fasli. They could not acquire any right under Section 230 of the Z.A. & L.R. Act. Furthermore, it was argued that the lease deed of 1967 did not relate to the plots in dispute, but they related to different plots and the respondent no.1 totally ignored all these documents and real aspect of the matter in issue in the

said judgment, therefore, the judgment and order is liable to be set aside on these counts.

In the case at hand, it is not disputed that the respondents entered into possession since before 1374 Fasli as held by the appellate court. The learned appellate court lost sight to the fact by applying the period of limitation as three years under Section 180 of the Tenancy Act and the appellate court has held that the respondents did not perfect their rights and the limitation had not expired. It may be added that the limitation was two years and not three years at the relevant time and the limitation against the petitioners for eviction had expired before the date of vesting because no suit was filed against them by the original tenure holder. Thus, the petitioners had perfected their hereditary rights under Section 180(2) of the said Act and at the time of vesting as per Section 131, they became Sirdar.

The respondents had perfected their rights at the relevant time, i.e. on the date of vesting, but even for the sake of arguments it may be taken, according to the case taken by the State that they had not perfected their rights on the date of vesting, the limitation would apply as that of Clause (i) and not of Clause (iii), as has been mentioned in the Schedule under Section 209 because Clause (iii) only applies in those cases in which the land was trespassed after the date of vesting, as has been held earlier. In that eventuality also, from 1-7-1969, the limitation under Section 209 of the ZA & LR Act had also expired on 1-7-1972 before the enforcement of the Ceiling Act and it is not disputed that no suit was filed after the date of vesting against the petitioners, therefore, the respondents had acquired rights under Section 210 of the said Act.

It was further argued that the entry of the relevant Khasaras, referred to above, do not show that the name of the appellant-petitioners were recorded in the remarks column of Khasra in accordance with law over the land of which they are

trespassers, they cannot be deemed to have perfected their title over the land and such entry would not be of any avail to the persons concerned. It has been held by the Apex Court in the case of ***"Wali Mohammad (deceased) by L.Rs. Vs. Ram Surat and others" [1989, R.D. Page 403 (Supreme Court)]*** that entries in revenue records should generally be accepted at their face value, but presumption of its correctness does not apply to forged or fraudulent entries. What the entry states in revenue records cannot be challenged, but the same can be challenged if the same was made fraudently or surreptiously. It was further held by the Apex Court that ***" It is true that the earlier in the revenue record ought, generally to be accepted at their face value and courts should not embark upon an appellate inquiry into their correctness. But the presumption of correctness can apply only to genuine, not forged or fraudulent, entries. The distinction may be fine but it is real. The distinction is that one cannot challenge the correctness of what the entry in the revenue record states but the entry in the revenue record states but the entry is open to the attack that it was made fraudulently or surreptitiously. Fraud and forgery rob a document of all its legal effect and cannot found a claim to possessory title."***

In the view of the discussion above, it is clear that the respondents had perfected their rights before the date of vesting and they had become Sirdar under Section 131 of the U.P.Z.A. and L.R. Act being hereditary tenants. It is not disputed that no suit under Section 180 of the U.P.Tenancy Act or Section 209 of the ZA and L.R. Act was filed against the respondents. The learned Additional Commissioner after having gone through the record and appreciating the legal position rightly allowed the review petition filed by the contesting respondents and it has been rightly held that they have become Bhumidhars. The impugned judgment and order does not suffer from any illegality or material infirmity. There is no merit in the writ petition preferred by the State.

The writ petition is hereby dismissed. No order as to costs.

**(B.S. Verma, J.)**

RCP